

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Paul I. Palant, as Trustee of the Paul I. Palant Revocable Trust, Paul I. Palant IRA, Jared J. Palant and Paul I. Palant, JTEN, Claimants v. Morgan Stanley DW Inc., A.G. Edwards & Sons, Inc., and Sandra Gage Sempkowski, Respondents

Case Number: 03-04528

Hearing Site: Las Vegas, Nevada

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Nature of the Dispute: Customers v. Members and Associated Person

**REPRESENTATION OF PARTIES**

For Claimants:

Herbert Beigel, Esq.  
Law Offices of Herbert  
Beigel & Associates  
Tucson, Arizona

For Respondents Morgan Stanley DW Inc. and Sandra Gage  
Sempkowski:

Todd E. Hale, Esq.  
Lewis & Roca, LLP  
Tucson, Arizona

Aaron L. Danzer, Esq.  
Morgan Stanley DW Inc.  
San Francisco, California

For Respondent A.G. Edwards & Sons, Inc. and Sandra Gage  
Sempkowski:

Brent Burtin, Esq.  
A.G. Edwards & Sons, Inc.  
St. Louis, Missouri

**CASE INFORMATION**

Statement of Claim filed: June 17, 2003

Claimant Paul I. Palant, IRA's Uniform Submission Agreement signed: June 12, 2003

Claimant Paul I. Palant, as Trustee of the Paul I. Palant Revocable Trust's Uniform Submission Agreement signed: July 12, 2003

Claimants Jared J. Palant and Paul I. Palant, JTEN's Uniform Submission Agreement signed: August 26, 2003

Joint Statement of Answer filed by Respondents Morgan Stanley DW Inc. and Sandra Gage Sempkowski: December 11, 2003

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed: December 11, 2003

Respondent Sandra Gage Sempkowski's Uniform Submission Agreement signed: December 10, 2003

Joint Statement of Answer filed by Respondent A.G. Edwards & Sons, Inc. and Sandra Gage Sempkowski: December 12, 2003

Respondent A.G. Edwards & Sons, Inc.'s Uniform Submission Agreement signed: October 15, 2003

### **CASE SUMMARY**

Claimants asserted the following causes of action: unsuitability, negligence, and breach of fiduciary duty. Claimants' allegations involved the purchase of securities on margin and the purchase of Morgan Stanley technology mutual funds and unit investment trusts.

Unless specifically admitted in their Answers, Respondents denied the allegations of wrongdoing set forth in Claimants' Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested at least \$500,000.00 in compensatory damages, pre- and post-judgment interest, and costs, including attorney's fees.

Respondents Morgan Stanley DW Inc. and Sandra Gage Sempkowski requested dismissal of Claimants' Statement of Claim in its entirety, expungement of this matter from Respondent Sempkowski's CRD records, and costs.

Respondent A.G. Edwards & Sons, Inc. and Sandra Gage Sempkowski requested dismissal of Claimants' Statement of Claim in its entirety, and costs, including attorney's fees.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On December 12, 2003, Respondents A.G. Edwards & Sons, Inc. and Sandra Gage Sempkowski filed a Motion to Dismiss Claims of Jared Palant and a Motion for More Definite Statement. On January 26, 2004, Claimants filed responses to these motions in which Claimants stated that they did not object to the dismissal of Jared Palant as a Claimant. On March 8, 2004, the Panel issued an initial pre-hearing conference scheduling order that stated that Claimants' counsel had

withdrawn Jared Palant as a Claimant. The order also stated that A.G. Edwards & Sons, Inc. and Sandra Gage Sempkowski's attorney M. Jane Matoesian was instructed to contact counsel to obtain mutually agreeable dates and times for oral argument on her Motion for More Definite Statement and to provide NASD with these dates and times. On September 2, 2004, the Panel issued an order in connection with certain disputed discovery matters; this order also stated that since A.G. Edwards & Sons, Inc. did not respond to the Panel's prior request that she provide dates to schedule oral argument on her Motion for More Definite Statement, that motion was deemed abandoned and was denied by the Panel.

By letter dated September 29, 2005, Brent A. Burtin, counsel for A.G. Edwards & Sons, Inc. and Sandra Gage Sempkowski, advised NASD that Ms. Sempkowski had passed away on September 27, 2005.

On March 27, 2006, Claimant dismissed Respondent A.G. Edwards & Sons, Inc. from this matter with prejudice.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants' claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) Any and all relief not specifically addressed herein is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or

controversy. Accordingly, the member firm Morgan Stanley DW Inc. is a party, and the following fees are assessed:

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$2,750.00</u>
<b>Total Member Fees</b>	<b>= \$5,200.00</b>

Accordingly, the member firm A.G. Edwards & Sons, Inc. is a party, and the following fees are assessed:

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$2,750.00</u>
<b>Total Member Fees</b>	<b>= \$5,200.00</b>

#### **Adjournment Fees**

The following adjournment fees are assessed:

November 8-12, 2004, adjournment requested by Claimants and Respondents	= \$ 1,125.00
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The Panel assessed the adjournment fee ½ to Claimants and ½ to Respondent Morgan Stanley DW Inc.

October 18-20, 2005, adjournment requested by Claimants and Respondents	= \$ 1,500.00
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The Panel waived the adjournment fee.

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. The following forum fees are assessed:

One (1) pre-hearing conference session with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: March 8, 2004 1 session	
Six (6) hearing sessions @ \$1,125.00/session	= \$ 6,750.00
Hearings: March 27, 2006 2 sessions	
March 28, 2006 2 sessions	
March 29, 2006 2 sessions	
<b>Total Forum Fees</b>	<b>= \$7,875.00</b>

1. The Panel assessed \$3,937.50 of the forum fees jointly and severally to Claimants.

2. The Panel assessed \$3,937.50 of the forum fees to Respondent Morgan Stanley DW Inc.

**Fee Summary**

1. Claimants Paul I. Palant, as Trustee of the Paul I. Palant Revocable Trust, Paul I. Palant IRA, Jared J. Palant and Paul I. Palant, JTEN are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 562.50
<u>Forum Fees</u>	<u>= \$3,937.50</u>
Total Fees	= \$4,800.00
<u>Less payments</u>	<u>= \$(1,425.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 3,375.00</b>

2. Respondent Morgan Stanley DW Inc. is charged solely with the following fees and costs:

Member Fees	= \$ 5,200.00
Adjournment Fee	= \$ 562.50
<u>Forum Fees</u>	<u>= \$ 3,937.50</u>
Total Fees	= \$ 9,700.00
<u>Less payments</u>	<u>= \$(5,200.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 4,500.00</b>

3. Respondent A.G. Edwards & Sons, Inc. is charged solely with the following fees and costs:

Member Fees	= \$ 5,200.00
<u>Less payments</u>	<u>= \$(5,200.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

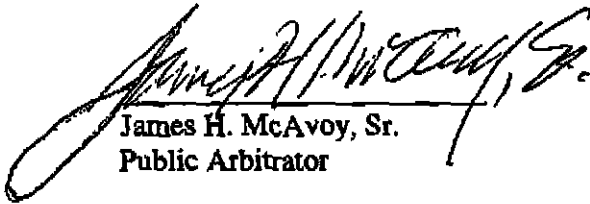
**ARBITRATION PANEL**

*Thomas Y. Higashi, Esq.*  
*James H. McAvoy, Sr.*  
*James Thomas Flynn, Jr.*

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*Public Arbitrator, Presiding Chair*  
*Public Arbitrator*  
*Non-Public Arbitrator*

**Concurring Arbitrators' Signatures**

  
James H. McAvoy, Sr.  
Public Arbitrator

4/3/06  
Signature Date

\_\_\_\_\_  
James Thomas Flynn, Jr.  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

**Dissenting Arbitrator's Signature**

\_\_\_\_\_  
Thomas Y. Higashi, Esq.  
Chair, Public Arbitrator

\_\_\_\_\_  
Signature Date

4/03/06  
Date of Service

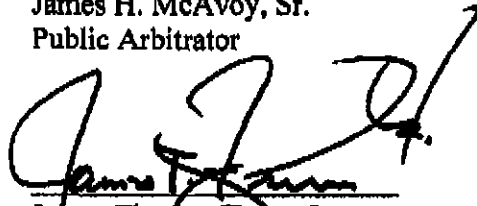
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<b><i>James H. McAvoy, Sr.</i></b>	-	<b><i>Public Arbitrator</i></b>
<b><i>James Thomas Flynn, Jr.</i></b>	-	<b><i>Non-Public Arbitrator</i></b>

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Public Arbitrator

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James Thomas Flynn, Jr.  
Non-Public Arbitrator

3/30/06  
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Signature Date

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Thomas Y. Higashi, Esq.  
Chair, Public Arbitrator

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<i>James H. McAvoy, Sr.</i>	-	<i>Public Arbitrator</i>
<i>James Thomas Flynn, Jr.</i>	-	<i>Non-Public Arbitrator</i>

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James H. McAvoy, Sr.  
Public Arbitrator

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Signature Date


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James Thomas Flynn, Jr.  
Non-Public Arbitrator


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Signature Date

**Dissenting Arbitrator's Signature**

  
Thomas Y. Higashi, Esq.  
Chair, Public Arbitrator

  
Signature Date

  
Date of Service